

IV. Detailed Analysis of Responses

Each respondent was asked the same six questions about what internal steps it had taken to effect compliance with the TCPA and FCC rules. Companies also were invited to furnish additional information showing their compliance with the law. The questions asked and the question-by-question summary analysis of companies' responses that follow illustrate and support the recommendations and conclusions drawn above.

Question 1

Industry responses to Question 1 in the Chairman's letter of September 8, 1993 demonstrated at once a discernible, bifurcated trend. Question 1 stated:

Does your organization maintain a "do-not-call" list? When was it instituted? Who is responsible for maintaining such a list?

Responses divided into two groups: 1) those companies that maintained an internal or in-house DNCL, and 2) those companies that required their clients to fulfill this obligation. Telemarketing companies in the latter group typically characterized themselves as third-party service bureaus that collect and transmit DNC requests to their clients for every project.

Thirty-three (33) companies reported that they maintain some form of internal or in-house DNCL. This figure includes several companies that subscribe to the DMATPSL and its quarterly updates, the Florida Department of Agriculture and Consumer Services List (commonly referred to as the Florida Asterisk List [FAL]), or other recognized suppression files required by state laws, and that use the DNCL maintained by a client as well as the DNCL developed by a company for a client as a screen prior to any telephone solicitations, but that also required the client to be responsible for maintaining the DNCL. Mere maintenance of an in-house DNCL, however, does not preclude several of these thirty-three companies from having a distinguishing characteristic in common with the eighteen (18) companies in the second group: less than satisfactory responses to other questions in the survey. Specific deficiencies shared by these telemarketers are noted below.

Eighteen companies reported that they do not maintain an in-house DNCL, using only lists provided by the client. A number of these eighteen companies tended to provide less than forthcoming, if not evasive, responses to various questions in the survey, supplying the barest details or, in numerous instances, no response at all. Further, these eighteen companies consistently exhibited the highest degree of variance from the main thrust of

the TCPA. For example, telemarketers in this group responded that since the client (the "marketer," according to their interpretation of the TCPA) bears responsibility for establishing and maintaining the DNCL, Question 5 did not apply to them, or they did not keep running accounts by client, or the number of names on client DNC databases was unavailable and, accordingly, supplied no data.

A striking contrast to these companies' unresponsiveness was furnished by two of the four companies not required to respond. As indicated above, these companies are not required to maintain a DNCL because of the nature of their work--they serve only nonprofit organizations. As a matter of policy, however, the first company has maintained DNCLs for each of its nonprofit clients since 1988. It views this policy not only as being in the best interest of its nonprofit clients but also as making good business sense. This company reported that its client DNCLs have a combined total of approximately 375,000 names.

Similarly, the second company, which calls business numbers on behalf of tax-exempt, nonprofit charitable organizations, has made a determined voluntary effort since 1989-90 to refrain from soliciting any business or consumer who has expressed a desire not to be contacted via telephone. This company reported approximately 70,000 names on its DNCL. In its view, it makes little business sense to waste paper, telephone, and labor resources contacting people who are antagonistic to what it is doing, no matter how worthy the cause of the nonprofit organization on whose behalf it may be calling.

In this connection, Subcommittee staff found it useful to note how another company, which maintains an in-house DNCL, viewed its role. In its written policy regarding implementation of the FCC rules, this company sees itself, as a user of lists, as obligated to help list brokers, charities, or corporations themselves further update information by maintaining a suppression file, even if these entities have ultimate responsibility for maintaining a DNCL. This viewpoint and the viewpoint of the two nonprofit companies profiled serve as evidence of at least a sector of the industry committed to enhancing the reputation of telemarketing companies as responsible and ethical organizations.

Question 2

Question 2: What mechanisms to collect telephone subscriber data for this "do-not-call" list do you have in place? How does one go about requesting to be put on your "do-not-call" list? Once a request is made, what steps are taken by your organization to ensure that the requesting party is not called again in the future?

Concerning parts one and two of this tripartite question, which encapsulates one of the key provisions of the TCPA, staff found, not surprisingly, that compliance was uniform. Most companies reported developing detailed procedures and many had incorporated them into their written policies. Several companies, however, provided unsatisfactory responses. For example, while vaunting its compliance with the letter and spirit of the TCPA, one company observed that, as a service bureau, it did not maintain any database files and therefore was unable to maintain a DNCL. This company advises its clients to add customers to their respective DNCLs, should any of their customers inform the company that they do not wish to be called. Further, this company requires all its clients to maintain an in-house DNCL and to subscribe to the DMATPSL, so that consumers not wishing to be solicited by telephone may be deleted from a calling list before names are submitted to the firm. A second company reported that this question did not apply to it because it did not maintain its own list but called only client-provided lists. Unlike the first company in this group, neither this second nor yet a third company indicated whether it required clients to use the DMATPSL. None of these companies provided specific responses to this question.

Regarding part three of this question, staff found, those telemarketers that maintain a permanent, master DNCL or suppression file typically reported comparing future files that come in from all their clients to this list, by computer, and suppressing any names in the file, so that they do not receive further telephone solicitations from the companies. This request also is known as a *global exemption*. Finally, many companies indicated that automation has greatly simplified the task of collecting DNC requests, to the point where a telephone sales representative merely has to strike a function key on the computer keyboard to add the telephone number of the person to whom he or she is speaking, to the specific DNCL of the client whose project is running at that time.

Question 3

Question 3: When and how are your employees educated with regard to the list? Please provide the Subcommittee with any training materials or scripts used as part of the education process.

With regard to part one of this question, fifty (50) companies reported offering training to their employees. Only one company provided no response here. **Fifteen (15) companies furnished no training materials or scripts with their initial response to part two of this question.** In addition, many companies can be numbered among those supplying such materials to the Subcommittee only by adopting the most generous interpretation of the materials submitted, that is, one that

permits a brief policy statement (one-half page or less), or a waiver concerning the TCPA to be signed by telephone sales representatives, to qualify. The staff believes that telephone sales representatives ought to be required to acknowledge their understanding of, and promise to follow, the provisions of the TCPA and FCC rules implementing this law, by signing a statement to that effect. Further, the materials provided by numerous companies inadequately treated issues of compliance. For example, some training materials and many written policies contained no reference to the time limits for making telephone solicitations (the hours between 8 A.M. and 9 P.M. in a prospective customer's local time zone). Again, staff found, companies that did not maintain an in-house DNCL tended to predominate in these deficiencies, but other telemarketers also were not immune from them.

Question 4

Question 4: If your telemarketing operations are not centrally located, how does your organization ensure that all of your offices do not call the individuals on the "do-not-call" list compiled at your office?

With the exception of one company that provided no response to this question, staff found thirty-four (34) companies that reported some variation on this formula: a central data processing department or management information systems (MIS) department collects and maintains DNC requests and purges lists of these records before shipping them to remote sites or, in the case of those companies that do not maintain an in-house DNCL (third-party service bureaus), clients. Included in this figure, for example, is one company that reported that a majority of its telemarketing operations are centrally located, and those that are not use calling lists screened by the company or by its clients.

As expected, anomalies tended to be concentrated among those companies that did not maintain an in-house DNCL. For example, one company reported that since the client was responsible for maintaining the DNCL, lists received by the company came purged of DNC records. Similarly, a second company reported that the project manager at each office transmits DNC information to the client via telephone facsimile machine or modem at the end of each calling shift; whereas a third company reported only that "...the same procedures are in place..." at both of its phone centrals; and a fourth company reported that policies and procedures are maintained identically in each facility, with key management personnel checking records on a regular basis to make sure procedures are followed. This company's clients are responsible for maintaining all data information, including DNC information. Several companies in this group (those that do not maintain an in-house DNCL) responded that this question did not

apply to them and gave no explanation.²⁵

Question 5

Question 5: Currently, how many names do you have on your "do-not-call" list? How do you ensure that the list is completely up-to-date?

Several factors influenced companies' responses to this question, and chief among them being whether or not they subscribed to the DMATPSL and other lists. Since the DMATPSL contained approximately 580,000 names at the time the survey was initiated, twenty (20) companies that indicated that they subscribed to this list reported totals reflecting this fact. For example, one company reported that it subscribed to the DMATPSL and its quarterly updates and thus had 580,000 names on its DNCL. Similarly, a second company had 817,154 names on its DNCL, with 583,120 coming from the DMATPSL. This company's list was updated weekly.²⁶

Not infrequently, many companies reported low totals on their DNCLs. Staff could not determine from their responses if these low figures reflected only internal DNC requests compiled by them and thus nonuse of the DMATPSL, or if the figure reported represented only the in-house DNCL total. For example, one company reported 40,686 names on its list, which was updated daily. This company did not indicate whether it subscribed to the DMATPSL. The highest number of names reported on a DNCL as of September 1993 amounted to the astonishing total of 5.35 million. Interestingly, one of this company's client-specific DNC files contained approximately 4.8 million names. The same company not only subscribes to the DMATPSL, FAL, Oregon Asterisk File, and Private Citizen Directory and maintains its own comprehensive DNC files, but also provides copies of client-specific DNC files to applicable clients for their in-house list scrubbing efforts. Finally, this company's DNC file of consumers requesting removal from all telemarketing firms contained

²⁵Companies which indicated that they have only one location were not counted among those which responded that this question did not apply to them.

²⁶As of the date of this report, the DMATPSL contained approximately 500,000 names. It is worth noting that the DMA's Mail Preference Service List (DMAMPSL), which operates on the same principle as the DMATPSL (see above, n. 13) and maintains consumers' names and addresses for the same length of time (five [5] years), except that it registers consumers who wish to receive less advertising mail, contains approximately 3.5 million names (source: DMA). This anomaly could not be explained in a conversation staff held with a representative of the DMA.

slightly more than 1,000 names. The second and third highest totals of names reported on a DNCL amounted to 3.4 million and 2.3 million, respectively. The companies reporting these figures also subscribed to the DMATPSL. No other company reported a number higher than 817,154 (cited above).

On the other hand, staff also found, those companies that did not maintain an in-house DNCL but instead relied on client-provided DNCLs often reported that this question did not apply to them and, correspondingly, furnished no data to either part of this question. According to these companies, their clients are responsible for maintaining the DNCL, to whom daily, weekly, or monthly updates are transmitted.

Question 6

Question 6: Please provide the Subcommittee with your written policy, as required by FCC regulations, for maintaining a "do-not-call" list. Also indicate the date this policy was drafted and went into effect.

Forty-two (42) companies reported having written policies and furnished copies of same, with most taking effect on or before the date mandated by the FCC for companies to comply with the TCPA. In the case of more recently established companies, their policies became effective during 1993. Nine companies did not provide a written copy of their policy or indicate the date it was drafted or took effect. In addition, not a few companies provided copies of their written policy that were so brief as to be incomplete or insufficiently specific with respect to compliance. An example will illustrate their gross inadequacy:

As a professional corporation in the telemarketing industry, x (company name) must abide by rules, guidelines, procedures and policies set forth by the local, state and federal governments for payroll, outbound telemarketing activities and overall business activities. We are in full compliance with all Federal Communication [sic] Commission standards and, in specific, the rules and regulations from the Telephone Consumer Protection Act of 1991, CC:Docket No. 92-90 (released October 16, 1992).

Far from being extreme, this statement typifies what passes for a written policy with many companies.²⁷

In this group, staff found, those companies that did not maintain an in-house DNCL especially predominated. On the other hand, numerous companies provided clear and extensive, if not model, written policies. Gannett and JCPenney particularly

²⁷See, too, the example cited above, p. 10.

deserve to be singled out in this regard. As indicated above, however, the high level of compliance of a minority of companies with this provision of the law could not offset either the grossly inadequate policies or the lack of a policy of a majority of the companies surveyed. Overall, therefore, the industry as a whole earned a grade of F regarding compliance with this provision of the TCPA and FCC rules.

The Chairman's letter also solicited any additional information companies believed would be helpful in showing their compliance with the TCPA. Approximately half of the companies responding opted to append such information somewhere in the body of their response, frequently in prefatory remarks of the cover letter to their response or in a final paragraph. For example, NYNEX, as do other local telephone companies, posts a message in the introductory pages of all its directories (over 32 million published annually) explaining how consumers can avoid unwanted telemarketing calls by writing to the DMA. A significant number of companies support and encourage use of the DNCL because it makes good business and ethical sense. The principal reason companies cited for not calling persons who are opposed to being solicited by phone is that this would be unproductive. Further, using DNCLs increases cost-effectiveness, since individuals on those lists have a pre-determined propensity not to buy.²⁸

This is a matter of no small importance. Again and again, these companies sounded a fugue-like refrain: undesired telephone solicitations waste not only the consumer's time but also the client's resources; economically, DNC makes sense--the FCC DNCL rules constitute positive tools in helping companies provide better and more economical products and services to customers; enactment of the TCPA can only benefit the telemarketing industry and assist in cleaning up companies that abuse this marketing channel.

Subcommittee staff found only one company that struck a plaintive note concerning compliance with the rules promulgated by the FCC to implement the TCPA. Reporting that it has expended considerable effort to understand and satisfy the requirements of the TCPA, the company further stressed this effort through a series of adjective phrases--"...substantial system changes, additional training procedures, and increased monitoring..."

Conclusion

This report raises the question whether additional steps need to be taken not only by the telemarketing industry to achieve a higher degree of compliance with the TCPA and FCC

²⁸For other comments, see above, pp. 12-13 (recommendations made by companies to the industry).

rules, but also by the Commission to effect such compliance. The key findings of the questionnaire--inadequate or nonexistent written policies and inadequate or nonexistent training materials--would argue in favor of action to ensure more uniform national standards than now exist. Moreover, a uniform policy could replace an ineffective policy of company-specific DNCLs and help reduce a continuing chorus of consumer complaints about an industry of vital importance to the American economy.

Appendix I

Telemarketing Companies Responding to Questionnaire

Advanced Data-Comm, Inc.
Advanced Telemarketing Corporation
AmeriCall Corporation
American Tele/Response Group, Inc.
AmeriPhone, Inc.
APAC TeleServices
AT&T American Transtech, Inc.
Edward Blank Associates, Inc.
Britcom Telemarketing
Dakotah Direct, Inc.
DialAmerica Marketing, Inc.
Direct Marketing Solutions, Inc.
Entertel, Inc.
Equitel Corporation
FM Services Corporation (formerly Payco Teleservices, Inc.)
FutureCall Telemarketing West, Inc.
Gannett Telemarketing, Inc.
GLS Direct, Inc.
Heritage Corporation
ICT Group Incorporated
Impact Telemarketing, Inc.
InfoCision Management Corporation
IntelliSell Corporation
Inter-Media Marketing
ITI Marketing Services, Inc.
JCPenney Telemarketing, Inc.
King TeleServices
Lexi International, Inc.
Magazine Marketplace Telemarketing
Market USA, Inc.
Mass Marketing, Inc.
Matrixx Marketing, Inc.
MCI Consumer Markets
Neodata
NYNEX Telemarketing Services
Precision Response Corporation
ProMark One Marketing Services, Inc.
Pro Tel Marketing, Inc.
Reese Brothers, Inc.
Results Telemarketing, Inc.
Ron Weber and Associates, Inc.
The Signature Group
Sitel Corporation
SOMAR, Inc.
Sprint/United Telephone-Florida
Telelink Systems, Inc.
TeleMark Incorporated
TeleQuest Inc.

TeleService Resources
TeleSystems Marketing, Inc.
Vertical Marketing, Inc.
Wats Marketing
West Telemarketing Outbound
World Book, Inc.
Zacson Corporation

TeleService Resources
TeleSystems Marketing, Inc.
Vertical Marketing, Inc.
Wats Marketing
West Telemarketing Outbound
World Book, Inc.
Zacson Corporation